UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,335	11/26/2003	Martin Soukup	57983.000166	8387

7590   04/13/2009

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EXAMINER
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ART UNIT	PAPER NUMBER
2419	

MAIL DATE	DELIVERY MODE
04/13/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	10/721,335	SOUKUP, MARTIN
	Examiner	**Art Unit**	
	BO HUI A. ZHU	2419	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>30 March 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-9 and 11-24*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
   <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

   /JAYANTI K PATEL/
   Supervisory Patent Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but they are not persuasive.

Regarding claims 1, 12 and 21, Applicant argues that Peng does not disclose or suggest "querying a storage module of the first network element to identify at least one source address of a previously received packet." (Remarks, page 12) Examiner respectfully disagrees. Peng discloses "adds legitimate IP addresses into an IP Address Database (IAD) and keeps the IAD updated by adding new legitimate IP addresses and deleting expired IP addresses." "a hash table is used to record the IP addresses that appeared in the current time interval." "Every hash table entry contains two fields, the number of IP packets and the time stamp of the most recent packet for that IP address." "By comparing the current counts of the hash table with the IAD, we can calculate how many new IP addresses have appeared in this time slot." Therefore, Peng teaches a previously recorded IP address in a hash table is identified which matches an IP address of an IP packet and the hash table records the number of times packets of the same IP address has been recorded, and the time the most recent packet was received.

Applicant further argues that Peng teaches away from Kirby and that it would not have been obvious to one of ordinary skill in the art at the time of the invention to utilize the routing control (e.g., specific types of packets) of Kirby in order to calculate a number of new IP addresses that appear in a time slot of Peng (Remarks, page 14). Examiner respectfully disagrees. Peng does not teach away from Kirby. Peng teaches using a hash table to record IP addresses that have been received, record new packet of an IP address if the IP address matches an IP address previously recorded in the hash table. What Peng does not disclose is routing the packet to a network element if there is a match of IP addresses. Kirby teaches a packet is routed to a destination when there is a match between an address of the packet and an entry in a table. It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Peng to route a packet with an IP address that matches an entry stored in its hash table towards a destination.

Applicant argues that Peng fails to disclose "the hierachical data structure is based at least in part on a plurality of classes of subnet." (Remarks, page 17). Examiner agrees that Peng does not disclose this feature and thus has relied on Hariguchi for disclosure of this feature. Applicant further argues that Hariguchi also fails to disclose this feature and asserts that Hariguchi merely discloses a plurality of hash circuits having one unique prefix length (Remarks, page 18). Examiner respectfully disagrees. Hariguchi discloses a routing table using a plurality of prefix length to represent a plurality of classes of subnet (e.g. see routing table 40; column 5, lines 20 - 31).

Regarding the 103 rejections of claims 2 and 13, Applicant questions that Examiner first asserts Peng discloses "the hierachical data structure is based at least in part on a plurality of classes of subnet" and then states that Peng does not disclose such limitation and cites Hariguchi for the disclosure of this limitation. Examiner respectfully notes that the statement of Peng disclosing this limitation is merely an editorial error and should have been removed from the Offical action. It is clear from the Office action that it is an editorial error because the Office action explictly states that Peng does not disclose such limitation and relied on Hariguchi for disclosure of this limitation. Examiner also respectfully notes that the omission of the language "Kirby et al. (US 5,828,846)" in the rejections of cliams 7, 8, 18 and 19 is merely an inadvertent oversight by the Examiner.